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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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Administrative Appeals Office
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC 02 092 52652

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 12 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

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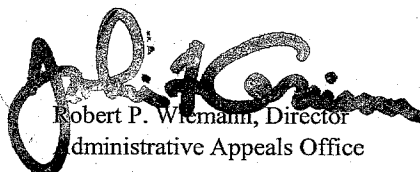
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an independent film company incorporated in 2001 that seeks to employ the beneficiary as a film director for a period of two years. The beneficiary is an author, screenplay artist, soundtrack composer, actor, graphic designer, and a film director. In a request for additional documentation, the director requested consultations from an appropriate U.S. peer group such as a labor union and a management organization, and a written contract (or summary of the terms of a written contract) under which the alien would be employed. In response to the request for additional documentation, counsel for the petitioner requested an extension of time in which to submit a reply. The director denied the petition, finding that the director failed to provide the requested documentation within the twelve weeks allowed by regulation, and that the evidence of record failed to establish the beneficiary's eligibility.

On appeal, counsel for the petitioner submits additional documentation, and a brief.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions, has a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability.

Under 8 C.F.R. § 214.2(o)(3)(v), in order to qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases,

publications contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

8 C.F.R. 214.2(o) (5) (i) (A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary is a Colombian citizen. He wrote a novel, then a screenplay for a movie he directed and acted in, titled *Vana Espuma*. According to the petitioner, the beneficiary won two Cesar Awards in the category of Best Film and Best Screenplay for

his film *Vana Espuma* (released in the U.S. as *Idle Mist*). The petitioner asserts that the Cesar film awards are the South American equivalent of the Academy Awards.

The issue in this proceeding is whether the petitioner has demonstrated that the beneficiary qualifies for classification as an alien of extraordinary achievement in the motion picture or television industry as defined by the statute and regulations.

The petitioner asserts that the beneficiary has been the recipient of significant national or international awards in his field of endeavor, namely, the two Cesar awards for his film. The petitioner states that the Cesar awards are the South American equivalent of the Academy Awards, yet failed to provide the Bureau with sufficient corroborating evidence that the beneficiary received these awards and that these awards are significant awards in the beneficiary's field of endeavor.

Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements.

For criterion number one, the petitioner asserts that the beneficiary has performed services as a lead or starring participant as an actor in his film. The petitioner failed to submit evidence that the beneficiary will perform services as a lead or starring participant in the future. The beneficiary does not satisfy this criterion.

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.

For criterion number two, the petitioner submits a reprint from the Internet Movie Database¹ that indicates that the beneficiary's film *Vana Espuma* won two Cesar awards in 1998. The petitioner submits several untranslated articles about the alien and his film. According to the regulations, any document containing foreign language submitted to the Bureau must be accompanied by a full certified English language translation. 8 C.F.R. § 103.2(b)(3). Given that no translations were provided, this evidence will be given no weight. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

Evidence that the alien has performed, and will perform, services as a lead, starring, or critical participant in productions or

¹ <http://us.imdb.com>.

events which have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials.

Again, the petitioner failed to provide evidence that the beneficiary will perform services in the future as a lead, starring, or critical participant in productions or events that have a distinguished reputation. The beneficiary does not satisfy this criterion.

Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.

In the absence of corroborating evidence to support the petitioner's claim that the beneficiary has critically acclaimed success in film or literature, the petitioner failed to establish that the beneficiary satisfies this criterion.

Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

The petitioner claims that as the recipient of two Cesar Awards, the beneficiary has received significant recognition. But the record is not persuasive in establishing that the beneficiary in fact won such awards. The petitioner failed to provide corroborating evidence about the awards and the beneficiary's receipt of the awards. An internet search disclosed that France has Cesar awards, but nothing was found regarding the South American Cesar award. The petitioner submits only one testimonial, provided as a consultation, written by John Crowther, a writer, theater director, actor, digital video project producer and director, and acting teacher in the United States. John Crowther wrote, "based on the materials submitted for my review, it appears that [the beneficiary] was nominated and won two prestigious industry wards [sic] known as the Cesar Awards." The beneficiary does not satisfy this criterion.

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

Counsel for the petitioner asserts that the beneficiary satisfies

this criterion by virtue of his receipt of a government scholarship to study art. Counsel's argument is not persuasive. The beneficiary does not satisfy this criterion.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary achievement in the motion picture or television industry.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.